

Harmony in the Chinese just war tradition

The Chinese approach to the relationship between *jus ad bellum* and *jus in bello*

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One of the fundamental characteristics of international humanitarian law (IHL) is the separation between *jus ad bellum* and *jus in bello*, which was originally devised in the West, subsequent to the [decline](#) of its just war tradition in legal practice. China has adopted a philosophically different approach to the relationship between these two branches of law, and further, a distinctive moral rationale for compliance with IHL. At its core, the Chinese approach propels the belligerent that glories itself as just, including China itself, to uphold, rather than circumvent, the functioning of IHL. This approach stems from the Chinese just war tradition with a history of over 2500 years.

The Chinese just war tradition: a sketch

The idea of “just war” is not alien to Chinese culture. Ancient Chinese realized that the natures of wars were not identical and only “just war” (##) was morally justifiable. The idea of just war appeared widely in ancient Chinese texts on the topic of war.

Ancient Chinese theorists developed four primary criteria for just war. Firstly, there should be a competent authority to wage war. As [Mencius](#) submitted, a just war should involve superiors attacking inferiors; peers should not attack each other. The Chinese tradition understood such an authority in a moral sense. In normal circumstances, a just war should be [initiated](#) by the Chinese emperor who was presumed to be morally superior to anyone else. But if the emperor behaved tyrannically, he would lose his moral superiority. In this case, other actors (e.g. the feudal lords and rebels) could also gain competence to wage war.

Secondly, there should be a just cause for resorting to war. Under the vertical structure of superiors attacking inferiors, just war, except in the case of self-defence, was synonymous with “punitive expeditions (#)”. Accordingly, the aim of just war was similar to the one of criminal justice: [to relieve](#) the people and to punish the wicked (#####). [The Rites of Zhou](#) intensively developed a list of prohibited offences that would incur punitive expeditions. Those offences were severe disruptions of the moralized political order of the world. To punish the perpetrators and to restore the situations gave rise to just causes for starting a war.

Thirdly, even a just war should be a last resort. Ancient Chinese perceived the world to be an [immanently peaceful](#) setting. As the self-proclaimed centre of culture, ancient China believed that it was only natural for it to [civilize](#) the rest of the known world. As China existed to provide peace and order, the primary means gaining its

cultural universality was edification and transformation (##) rather than coercion. Winning submission of others through military campaigns was seen as abnormal. Thus, in classical Chinese treatises, [weapons](#) were widely portrayed as evil or inauspicious implements and their use could be discussed only if there was no alternative to avoid violence.

The last criterion of the Chinese version of just war was just conduct during war. It was this accentuation that leads to China's holistic understanding of the relationship between *jus ad bellum* and *jus in bello*.

China's understanding of the relationship between *jus ad bellum* and *jus in bello*

Underlining *jus in bello* was a logical result of the traditional Chinese conception of just war. Since just war meant punishment of serious offences, which result in atrocities and chaos, the military violence during a just war should only [target](#) those responsible for the offences, and the adversary effect on the innocent yearning for peace and order should be exerted as little as possible. The army of the just side was thereby denominated as "the Army of Benevolence and Justice (#####)", trained with propriety and benevolence, and expected to adhere to kindheartedness and humanity in the course of war. As [Xunzi](#) envisaged, "[w]herever the army of a humane man is, it has an effect like that of a spirit; wherever it travels, it produces transformation. Like seasonable rains, it pleases and gives joy to all."

A number of ancient Chinese treatises contained detailed "dos and don'ts" for a righteous army. For instance, the following rules were proposed in [The Methods of the Ssu-ma](#):

When you enter the offender's territory, do not do violence to his gods; do not hunt his wild animals; do not destroy earthworks; do not set fire to buildings; do not cut down forests; do not take the six domesticated animals, grains, or implements. When you see their elderly or very young, return them without harming them. Even if you encounter adults, unless they engage you in combat, do not treat them as enemies. If an enemy has been wounded, provide medical attention and return him.

Jus in bello constituted an indispensable criterion. A just war should be conducted in a just way; otherwise, the justness of the war was at stake. Exactly as just war could not lack a just cause, [infringing](#) *jus in bello* would also preclude war from being just.

China's holistic understanding of the relationship between *jus ad bellum* and *jus in bello* remains an active part of its contemporary approaches to IHL. During the negotiation of the Additional Protocol I, the Chinese delegation [proposed](#) that "a distinction should be made between just and unjust wars. The aggressor used cruel and genocidal weapons while just wars fought for national independence were directed against the use of such weapons". Upon signature of the Conventional Weapons Convention, China [stated](#) that the basic spirit of the Convention conforms to China's consistent position and serves the interest of opposing aggression and maintaining peace. While these obscure statements may sound bizarre for

IHL dogmatists, they present the poor adaptivity of the said Western-originated separation to the Chinese tradition. China's understanding is more unequivocally reflected in one [commentary](#) published in the People's Liberation Army (PLA) Daily,

[T]he justness of war depends on not only whether the end of war is just, but also whether the means of war is just... The anti-human and anti-social conduct during war, such as the use of weapons of mass destruction, will lose the support of the general populace and therefore alters the nature of the war.

China's holistic approach has implications on China's IHL practices. On one hand, as a posited self-proclaimed just belligerent, China is ready to be self-disciplined in implementing IHL obligations to demonstrate its justness. The PLA has [affirmed](#) that it would abide by the law under the standards of civilization (####) and not commit even the slightest offence against people (####). The discipline of the PLA is subject to strict military regulations, in which a range of IHL issues have been dealt with.

Current relevance of the Chinese approach to IHL

The separation between *jus ad bellum* and *jus in bello* has a discernible cultural attribute. There is a compelling humanitarian reason nowadays defending this idea from the Western legal motto "*ex injuria jus non oritur*". As [Sassòli](#) submitted, "[w]ar victims need as much protection against the belligerent fighting in conformity with the *[j]us ad bellum* as against a belligerent who violated *[j]us contra bellum*". In effect, however, this separation is under attack by the argument that the belligerent with a just cause should not be treated on the same footing with its evil opponent before IHL; the unjust side should be subject to fewer rights or more duties. The US doctrine of "war on terror" serves as a prominent [example](#) of this trend. For some authors, it may be taken as a new form of [revival](#) of the Western just war tradition, among other intruders such as wars of national liberation and humanitarian intervention.

In the Western just war tradition, *jus ad bellum* and *jus in bello* were also interdependent. In the early Middle Ages, *jus ad bellum* [determined](#) largely the limits of *jus in bello*; at its extremity, once the cause was just, any means necessary to achieve the end was permissible. Not until the days of theorists such as Vitoria, Grotius and Vattel did the Western tradition begin to [elaborate](#) the notion of moderation in war ("*temperamenta belli*" in Grotius's terminology). The shadow of the old views nevertheless remained at that time. Pufendorf, for example, [held](#) that while the cause for war must be just, the conduct during war is unconstrained as long as it serves the goal of peace.

Compared with its Western counterpart, the Chinese approach to the relationship between *jus ad bellum* and *jus in bello* owns two features. Firstly, while both civilizations developed the holistic idea of attaching moderation of warfare to justice, China treated the weight of *jus ad bellum* and *jus in bello* in a more balanced manner. In the Chinese tradition, violations of *jus in bello* were frequently addressed as an indicator to [negate](#) the justness of war. The proposition of [unconstrained warfare](#) was once implied by Legalism but quickly abrogated by Confucianism,

whereas “holy war” prevailed in Medieval Europe to justify slaughter wholesale the people of an enemy. Secondly, the Chinese concentrated on the positive facet of the relationship regarding how a just belligerent should act to prove its justness, while the Western tradition emphasized harder on the negative implication of linking *jus in bello* with *jus ad bellum*, that is, to deny certain rights of the unjust belligerent.

While the Western just war tradition has largely fallen into disuse in practice since the nineteenth century, the Chinese tradition, as elucidated, remains viable for China. China confronts no difficulty in reconciling the doctrinal separation between *jus ad bellum* and *jus in bello* with its own holistic mindset, since it does not challenge the equal application of IHL as a baseline, but merely pushes the just side to do well and do more on a voluntary basis. In IHL, the dominance of the Western academics explains the anxiety about the recrudescence of the (Western) just war doctrine and the determination to keep them separate. A Chinese perspective on just war may provide academia with an uncommon angle to reappraise the relationship between *jus ad bellum* and *jus in bello*.

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